PUBLIC HEALTH ADVISORY AND APPEAL BOARD

ANNUAL REPORT 1988 – 89

Alberta
HEALTH

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HEALTH

Office of the Minister

323 Legislature Building, Edmonton, Alberta Canada T5K 2B6 403/427-3665

June, 1990

Honourable Dr. David Carter
Office of the Speaker
Legislative Assembly of Alberta
Room 325, Legislature Building
Edmonton, Alberta
T5K 2B6

Dear Sir:

I have the honour to present the Annual Report of the Public Health Advisory and Appeal Board for the year August 1, 1988 to July 31, 1989.

Respectfully submitted,

Nancy J. Betkowski
Minister

Alberta
PUBLIC HEALTH ADVISORY
AND APPEAL BOARD

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June, 1990

Honourable Nancy J. Betkowski
Minister
Alberta Health
Room 323, Legislature Building
Edmonton, Alberta
T5K 2B6

Madam:

I have the honour and privilege to present the Annual Report of the Public Health Advisory and Appeal Board for the year August 1, 1988 to July 31, 1989.

Respectfully submitted,

Max McCann
Chairman
Public Health Advisory
and Appeal Board

PUBLIC HEALTH ADVISORY AND APPEAL BOARD

Chairman:

Max McCann (St. Albert) — Appointed board chairman August, 1988. Presently president of Idavon Management Consultants, President of the Tourism Industry Association of Alberta, and a senator in the Canada Jaycees. Formerly in restaurant business for 18 years. Mr. McCann was named citizen of the year in St. Albert in 1985.

Vice Chairman:

Muriel Abdurahman (Fort Saskatchewan) — Appointed Board Vice-Chairman August, 1988. Presently chairman of Alberta Hospital Edmonton, a governor of the Hospital Foundation, and member of Northern Alberta Advisory Board for TransAlta Utilities Corporation. Former mayor and councillor of Fort Saskatchewan and chairman of the Health Unit Association of Alberta.

Members:

Gerry Blum (Calgary) — An architect and planner in Alberta since 1960, and has spent 14 years teaching architecture in both Canada and Zambia.

Jeannette Bougie Bourget (Bonnyville) — Presently chairman of the Social Services Advisory and Appeal Board for the Municipal District of Bonnyville, pastoral care volunteer at the Bonnyville Health Centre. Founder and past president of the Dove Centre, which is a facility for the disabled, and former Catholic School Trustee.

Dr. Sergi Causing (Edmonton) — is a medical doctor who has been active in the practice of medicine for 15 years. He now resides in Edmonton, although he previously had a medical practice in Pincher Creek.

Kathleen Clarke (Calgary) — University training in both nursing and business administration. Work experience includes counsellor to juveniles, Executive Director of Family Day Home Program. Past Deputy Chairman of Calgary General Hospital, Treasurer of Calgary Regional Mental Health Council and member of University of Calgary Chancellors Club.

Barbara A. Cumberland (Red Deer) — Former surgical nurse with an extensive volunteer history serving Family and Community Support Services, the Regional Cancer Board, the United Way and Meals on Wheels. A coordinator for the 1988 Winter Olympics in Calgary.

Robert M. Field (Grande Prairie) — Formed and worked in architectural and engineering businesses in Grande Prairie, Dawson Creek and Vancouver since 1960. Past president of the Kinsmen Club and has been active in the Rotary Club in Grande Prairie.

Charles A. Taylor (Medicine Hat) — brings to the board a varied background which includes work in the food and energy industries. He has been president of the Kinsmen Club, the Chamber of Commerce and the Medicine Hat Shrine Club. He has served on the Economic Development Board for the City of Medicine Hat for five years.

Advisory and Appeal Secretariat:
Jenny Malanchuk — Coordinator.

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HISTORY AND MANDATE

The Public Health Advisory and Appeal Board was formed on July 31, 1985 (under Section 2 of the Public Health Act, Chapter P-27.1 Statutes of Alberta 1984). It replaced the Provincial Board of Health, which had its origins in Alberta's first Public Health Act (c. 1909).

The purpose of the Provincial Board of Health, as stated in the 1909 Act, was 'to take cognizance of the interests of health and life among the people of the province.' It had appeal and advisory functions and used its powers broadly for the protection and improvement of health and the prevention of disease. The board was made up mostly of government officials from various departments concerned with health issues.

The mandate of the Public Health Advisory and Appeal Board is stated in Section 3 of the Public Health Act as follows:

(a) to advise the Minister on matters pertaining to the public health;

(b) to make investigations or inquiries into, collect information relating to or conduct research into any matter relating to the public health and make its report in the manner and at the time specified by the Minister;

(c) on the request of the Lieutenant-Governor in Council, hold public hearings for the purpose of receiving submissions on matters pertaining to the public health and make its report to the Minister;

(d) hear appeals pursuant to Section 4 of the *Public Health Act*.

To carry out this mandate the board is comprised of nine members with varied professional backgrounds who represent all parts of the province.

ADVISORY ACTIVITIES

In 1988-89, the Public Health Advisory and Appeal Board was involved in a number of advisory activities: preparing a brief to the Premier's Commission on Future Health Care for Albertans; reviewing a discussion paper on mental health services in Alberta; reviewing the Food Regulation (Regulation Number 240/85 of the Public Health Act); and investigating the minimum distance separation requirements for intensive livestock operations.

Responding to a January 15, 1988 request from the Honourable Jim Dinning, Minister of Community and Occupational Health, the board prepared a brief to the Premier's Commission on Future Health Care for Albertans, which was presented in March, 1989. The board met with the Commission on April 18, 1989.

On December 5, 1988, the Honourable Nancy J. Betkowski, Minister of Health, requested the board to review a discussion paper called "Mental Health Services in Alberta." During the review process, the board made a visit to Alberta Hospital, Edmonton, and held discussions with senior mental health administrators. In April 1989, the board tabled its submission with the Minister.

On March 6, 1989, the Honourable Nancy J. Betkowski requested comment and recommendations regarding Section 91, Division 4 (convenience food) of the Food Regulation, which covers modified atmosphere packaging. The Public Health Advisory and Appeal Board submitted its recommendations to the Minister on June 8, 1989. The board based the recommendations on information gathered from meetings with public and private sector Albertans working in or with the food industry, including a visit on April 12, 1989, to the Lacombe Agricultural Research Station and also invited submissions from health units and other parties. The intent of the recommendations was to clarify the use of manufacturing or "best before" dates on modified atmosphere packaged foods.

Responding to a December 20, 1988 request from the Honourable Nancy J. Betkowski, the board developed a terms of reference to investigate the minimum distance separation requirements for intensive livestock operations. This included planning for six town hall information gathering meetings to hear from concerned parties; during the 1988/89 year, the board held three such meetings, at Strathmore, Sylvan Lake and Barrhead and have three scheduled for 1989/90 year at Lethbridge, St. Paul, and Grande Prairie. As well, the board visited the federal Lacombe Agricultural Research Station and the Municipal District of Kneehills where the board was able to visit intensive livestock operations and to discuss and review municipal by-law governing intensive livestock operations. A meeting took place between the Board and a Committee of Planning Secretariat of the Department of Agriculture chaired by Stan Schellenberger of the Department of Agriculture. This resulted in the Honourable E. Isley, Minister of Agriculture, giving permission for Public Health Advisory and Appeal Board to circulate the Livestock Siting and Land Use Planning Steering Committee's Report and Recommendations during the investigation into intensive livestock operations. The board's investigation continued beyond its 1988/89 year-end; development of its recommendations was anticipated for 1989/90.

APPEAL ACTIVITIES

The Public Health Act establishes the Public Health Advisory and Appeal Board as an appeal body to hear appeals from decisions of local boards as defined in Section 4 of the Public Health Act. The Public Health Advisory and Appeal Board may confirm, reverse or vary the decision of a local board, and is obliged to give written notice of its decision to the appellant and the local board.

The board is subject to the general rules of administrative law and natural justice as they apply to quasi-judicial tribunals. To that end, it has retained Donald R. Cranston L.L.B. of the law firm Layton, Weeks and Cranston, to provide independent legal advice.

In January 1989, the board produced a brochure entitled *You Have the Right to Appeal a Decision of a Local Health Unit or Local Board*. The brochure describes the rights of individuals to appeal decisions and describes the appeal period, the process, and where to obtain further information.

A total of six appeals were heard this year. The following table is a summary of all appeals heard by the Public Health Advisory and Appeal Board from August 1, 1988 to July 31, 1989.

Decision #	Subject	Parties Involved
10/88	Appeal of a waiver of distance requirements respecting waste management facilities.	Wetoka Health Unit Town of Ponoka Leslie and Norma Lloyd
11/88	Appeal of decision re: distance requirements for the keeping of livestock.	South Peace Health Unit Howard Harold
12/88	Appeal of a waiver of the distance requirement respecting the keeping of livestock.	Red Deer Regional Board of Health Willem Van de Pol George Thesen J. Matichuk Holdings
1/89	Rehearing appeal from waiver decision (Madam Justice Picard in the Court of Queen's Bench of Alberta).	Leduc-Strathcona Board of Health Hygaard Fine Foods Ltd.
2/89	Appeal of a decision to refuse operating permit for a waste management facility.	Mount View Health Unit Town of Olds
3/89	Appeal of a decision to refuse to allow use of 2-compartment sinks for sanitizing utensils.	Mount View Health Unit Ron Doi

1988 – 89 SUMMARY OF APPEALS

11/88:
Howard Harold
Hearing held:
September 7, 1988

Harold Howard appealed the decision of the local board of the South Peace Health Unit to grant a waiver of Section 23-21-1(b) of the Provincial Board of Health Regulations respecting the keeping of livestock and poultry (Division 23) on the basis that Mr. Howard comply with a waiver granted by the Provincial Board of Health in 1975. However, the decision of the local board was unclear and the reasons for its ruling unknown. This board interpreted the decision from subsequent correspondence from Health Unit staff. The waiver of Section 23-21-1(b) was evidently conditional on the piggery operation of Mr. Howard being restricted to 40 pigs; in fact he sold a number of his pigs to comply with this condition when he became aware of it. The board concluded that as Mr. Howard would be forced to discontinue his piggery operations without the waiver, this constituted a hardship to him. The Board noted that the land was located in an agricultural setting, that Mr. Howard had not been aware of any restrictions in place when he purchased the land, and cannot operate as an economically viable piggery with the current restrictions. The Board further noted that the local board must have shared that view, though it was not expressly stated. Further, the board concluded that in light of the potential public health concerns respecting flies and odours from the piggery operation, Mr. Howard would need to work with the local board of health to develop methods to protect those affected. The board decided to vary the decision of the local board and grant a waiver of the distance requirement set forth in Section 23-21-1 of the Regulation, without reference to the number of pigs. The waiver was not to be taken as a waiver or lessening of the other responsibilities and obligations of Mr. Howard and the local board under this Regulation, however.

12/88:
George Thesen and J. Matichuk Holdings Ltd.
Hearing held:
December 21, 1988

By two separate Notices of Appeal, George Thesen and J. Matichuk Holdings Ltd. each (Decision #12/88) appealed the decision of the Waiver Committee of the Red Deer Regional Board of Health, which granted a waiver to Mr. Van De Pol with respect to the distance requirement found in Section 23-21-1 of the Provincial Board of Health Regulations respecting the keeping of livestock and poultry (Division 23). The board decided to reverse the decision of the Red Deer Local Board of Health, and did not permit a waiver of the distance requirement, as it was not satisfied that adherence to the distance requirement would cause Mr. Van De Pol a hardship in the operation of his piggery. Further, the board was not satisfied there would be an adequate degree of protection of the public health if the distance requirement were lessened.

1/89:
Hygaard Fine Foods Ltd.
Hearing held: February 15, 1989

Hygaard Fine Foods Ltd. appealed the decision of the Leduc-Strathcona Local Board of Health to refuse to grant a waiver of Section 91(1) of the Food Regulation. Following a hearing, the Board issued a decision on May 17, 1988 reversing the local board decision. The Board's decision was subsequently quashed by an Order of the Court of Queen's Bench. The matter came back before the Board for rehearing on February 15, 1989. The parties advised the Board that they had reached an agreement that the portion of the Board's earlier decision with respect to the issue concerning protection of the public health would stand. The only issue before the Board was whether there was a hardship to the Applicant in this particular case. The Board found there was no hardship to Hygaard in this particular case and accordingly upheld the local board decision.

2/89:
Town of Olds
Hearing held: February 28, 1989; concluded March 14, 1989

The Town of Olds appealed the decision of the Mount View Health Unit declining to issue an operating permit to the Town of Olds for the operation of a waste management facility, specifically a Waste Transfer Station, at the site identified therein for a temporary period of six months. The Town of Olds had commenced operation of a waste management facility on the site in question in 1961. By order of the Mount View Health Unit given in November, 1986, the waste management facility was closed. The Town of Olds later established a temporary transfer station on a portion of the site in May, 1987, without obtaining any approvals or permits from the Mount View Health Unit as required under the Waste Management Regulation. Despite an agreement in May, 1988 to discontinue use of the site as a temporary Waste Transfer Station effective September 30, 1988, the Town of Olds continued to use the site for waste transfer up to the time of the hearing. The board upheld the decision of the local health unit, except that instead of ordering the Town to discontinue operations forthwith, the board required that the operation of the Waste Transfer Station be discontinued within sixty days of the date of the decision. The board's hope and expectation was to see immediate steps taken for full reclamation of the site with appropriate installation of monitoring equipment for water contamination.

3/89:
Ron Doi
Hearing held:
April 4, 1989

Mr. Ron Doi appealed the decision of the Mount View Health Unit which refused to grant a waiver of Section 56(1) of the Food Regulation passed under the Public Health Act in favour of Mr. Doi. The appeal was heard in the absence of Mr. Doi, who did not appear. Mr. Doi had received notice of the hearing and was aware of the date and location. He requested that the hearing proceed in his absence. The evidence available indicated that Mr. Doi had not applied for a permit from the local board prior to purchasing an I.G.A. store within the previous year, and had thus not been able to identify the need for compliance with Section 56(1) of the Food Regulation. The Board could not be satisfied that the application of that section would cause a hardship to Mr. Doi. The board concluded that the two compartment sink in use was inadequate for properly sanitizing utensils used to prepare "ready to eat" foods, and that without a third sink, there was not an adequate degree of protection of the public health. Therefore, the board confirmed the decision of Mount View Health Unit and dismissed Mr. Doi's appeal.

10/88:
Leslie and Norma Lloyd
Hearing held:
April 26, 1989

Leslie and Norma Lloyd appealed the decision of the local board of health of the Wetoka Health Unit granting a waiver of the distance requirement contained in Section 3(1) of the Waste Management Regulation. At the hearing, the local board and the Town of Ponoka advised the Board that they were in agreement that the waiver decision of the local board should be overturned. Subsequent to issuance of the waiver decision, the local board learned that the Town of Ponoka did not hold a permit for the operation of a landfill. The Board agreed with the submissions and reversed the waiver decision.

OTHER ACTIVITIES

Health Unit visitations continued through the 1988/89 year. The purpose of these visitations is to communicate the mandate of the Public Health Advisory and Appeal Board and to become fully informed about the administration and program activities of individual health units and also to keep abreast of current health issues and concerns. The following health units were visited:

- Foothills Health Unit on October 5, 1988
- Drumheller Health Unit on January 24, 1989
- Athabasca Health Unit on February 8, 1989

During the review of mental health services, the board toured Alberta Hospital Edmonton on March 21, 1989.

The board made a submission to the Premier's Commission on the Future Health Care of Albertans on April 19, 1989.

Health related conferences and seminars enabled board members to have the opportunity to keep current of health perspectives and issues.

In 1988/89, the Public Health Advisory and Appeal Board was represented at the following:

- Health Unit Association Annual General Meeting: "Health within reach," in Edmonton, November 1-4, 1988
- Catholic Health Association of Alberta Annual Convention: "Facing the abortion issue," in Edmonton, November 22, 1988
- Alberta Hospitals Association Convention: "Sense for dollars: strategies for health," in Edmonton, November 22, 1988
- Health Facilities and Design conference: "People planning for people," sponsored by the Alberta Hospitals Association, in Edmonton, February 8-10, 1989
- Health Promotion: Working Together for Tomorrow conference, sponsored by the Alberta Hospitals Association and the Health Unit Association of Alberta, in Edmonton, March 15-19, 1989
- Health Unit Association Issues Conference: "Public health — moving proudly into the 1990s," in Banff, April 4-7, 1989
- Symposium in Community Health: "Current topics in community health," sponsored by the University Health Services Administration and Community Medicine, the Edmonton Board of Health, the Society of Alberta Medical Officers of Health, and the Alberta Heritage Foundation for Medical Research, in Edmonton, April 27, 1989
- Alberta Public Health Association Meeting: "Achieving quality in health: strategies and resources," in Edmonton, May 8-11, 1989
- Long Term Care Conference: "Institutional design for the future," sponsored by the Centre for Gerontology and the Alberta Long Term Care Association, in Edmonton, May 26, 1989.

Health Inservice Education and Research has broadened the understanding and appreciation of health related issues, allowing the Board to enhance its capacity in performing the advisory role.

Guest speakers invited to make presentations at board meetings included:

Modified Atmospheric Packaging	- Dr. L.J. Tyrrell, the Provincial Public Health Lab, August 23/88
	- Dr. M. Stiles, University of Alberta Food Microbiology, Adjunct Professor, October 26/88
Appeal Role	- Mr. D. Cranston, Board Counsel, Aug. 23, 1988, November 1, 1988
Advisory Role	- Mr. R. LeBlanc, Deputy Minister, Alberta Health, January 18, 1989
Financial Analysis	- Ms. C. Powell, Financial Services, Alberta Health, January 18, 1989
Investigation into Minimum Distance Separation Requirements for Intensive Livestock Operations	- Mr. A. Newman, Legislative Enforcement Specialist, Environmental Health Services, Alberta Health, January 10, 1989
	- Mr. J. Shaw, Environmental Health Engineer, Environmental Health Services, Alberta Health, January 10, 1989
	- Mr. S. Schellenberger, Chairman of the Planning Secretariat, Alberta Agriculture, and Mr. L. Fullen and Mr. M. Miller, Resource Planners, Resource Planning Branch, Alberta Agriculture, January 17, 1989
	- Representative of the Canadian Institute of Public Health Inspectors, Alberta Chapter: Mr. D. Richens, President, and Executive Members: Ms. L. Beck, Mr. B. Chrapko, Mr. D. Gilchrist and Mr. P. Nicholson, May 24, 1989
Mental Health Services Review	- Dr. R. Bland, Assistant Deputy Minister, Mental Health Services, Alberta Health, February 21, 1989
	- Ms. J. Zimmerman, Manager of Hospital Mental Health Services, Alberta Health, March 28, 1989
Public Health Division	- Dr. K. Hodgins, Assistant Deputy Minister, Public Health Division, May 17, 1989

Advisory and Appeal Board gratefully acknowledges the time and efforts of these guest speakers.